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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,524	10/08/2003	Leslie S. Marco	13727	9641
7590 Raymond W. Campbell TAYLOR & AUST, P.C. 142 S. Main St. P.O. Box 560 Avilla, IN 46710				
01/12/2010				
EXAMINER				
TAWFIK, SAMEH				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
01/12/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/681,524

**Applicant(s)**

MARCO ET AL.

**Examiner**

Sameh H. Tawfik

**Art Unit**

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-13 is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In claim 1, lines 5 and 8; “forming a container holding portion *only* in the carrier sheet” and “forming a handle portion *only* in the handle sheet” is not described in the filed disclosure/specification in a clear way to be understood.

Note, in the filed specification, last line of page 3 through page 4, end of 1st. paragraph is referring to “forming holes in the first handle portion similarly shaped to the first row of apertures” and “forming holes in the second handle portion similarly shaped to the third row of apertures.” and further supported on the filed drawings (Figs. 2-4; via holes formed of the handle sheet is similar and exact to the holes formed to the carrier sheet). That is contradicting to the claimed language of using the limitation “only”, as it seems like a container holding portion and handle portion been formed similarly/simultaneously in both sheets (carrier and handle sheets) not as been claimed “only in the carrier sheet” nor “only in the handle sheet”.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slomski (U.S. Patent No. 5,868,659) in view of Broskow (U.S. Patent No. 5,487,465).

Slomski discloses a method of making a container carrier, comprising steps of: providing a handle sheet and a carrier sheet (Fig. 4; via sheets handle sheet 56 and container sheet 52); positioning the handle sheet (56) on at least a portion of the carrier sheet (52), see for example (Fig. 4); connecting the handle sheet and the carrier sheet along a line of attachment (Figs. 3 and 4; via along attaching line 46/38); forming a container holding portion (via 22) only in the carrier sheet, including forming first and second rows of container receiving apertures in the carrier sheet on opposite sides of the line of attachment (Figs. 3, 4, and 6); and forming holes only in the handle sheet simultaneously with forming the first row of apertures (Fig. 4; via forming holes in the handle sheet 56 simultaneously with forming the apertures of web 52), the holes and the first row of apertures formed in substantially the same configurations, see for example (Fig. 4).

Slomski does not disclose the step of forming first and second rows of container receiving apertures in the carrier sheet after the steps of positioning and connecting nor the step of forming holes in the handle sheet and the forming the first row of container receiving apertures in the carrier sheet being performed by cutting through overlaying portions of the handle sheet and the carrier sheet to form holes and row of apertures in overlaying arrangement.

However, Broskow discloses a similar method and apparatus of making a container carrier with the step of forming first and second rows of container receiving apertures in the carrier sheet after the steps of positioning and connecting, and the step of forming holes in the handle sheet and the forming the first row of container receiving apertures in the carrier sheet being performed by cutting through overlaying portions of the handle sheet and the carrier sheet to form holes and row of apertures in overlaying arrangement see for example (Fig. 5; via stamping die 64 cutting through overlying portions of the handle sheet/portion and the carrier sheet/portion to form holes of container receiving apertures and holes in the handle portion).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Slomski's method and apparatus by having the step and means of forming first and second rows of container receiving apertures in the carrier sheet after the steps of positioning and connecting, via by connecting webs 52 to 56 before been feed to the forming stations 60 and 62, and the step of forming holes in the handle sheet and the forming the first row of container receiving apertures in the carrier sheet being performed by cutting through overlaying portions of the handle sheet and the carrier sheet to form holes and row of apertures in overlaying arrangement as suggested by Broskow, as a matter of engineering design choice.

Regarding claim 2: Slomski discloses the step of connecting performed by creating a substantially continuous weld between said sheets (Figs. 3 and 4; via weld/seal line 38).

Regarding claim 3: Slomski discloses the step of connecting the handle sheet with the carrier sheet along first and second spaced lines of attachment (Figs. 3 and 4; via connecting 64 at it's both sides with respect to the carrier sheet); and removing a portion of the handle sheet

between the first and second spaced lines of attachment, see for example (Fig. 4; via by removing portions of handle 26 between two connecting lines 38), to define first and second handle sheet portions separate from each other (via sequence of handle sheet portions 26).

Regarding claim 4: Slomski in view of Broskow does not disclose a third row of apertures in the carrier sheet. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Slomski in view of Broskow by having a third row of apertures in the carrier sheet, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 5: Slomski discloses the step of forming holes in the handle sheet simultaneously with forming the apertures, see for example (Fig. 4).

Regarding claim 6: Slomski discloses the step of forming first and second handles in the handle sheet (via multiple forms of 26).

Regarding claim 7: Slomski in view of Broskow does not disclose the step of forming a merchandising panel. However, the examiner takes an official notice that such a merchandising panel in container carrier is old, well known, and available in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Slomski in view of Brosko, by having the step of forming a merchandising panel, as a matter of engineering design choice, in order to advertise for the products.

***Allowable Subject Matter***

Claims 8-13 are allowed.

***Response to Arguments***

Applicant's arguments filed 10/05/2009 have been fully considered but they are not persuasive.

Applicants argue in pages 5 and 6 of the filed arguments that the way the specification written along with the filed drawings would make one with ordinary skill in the art understands the claimed "only in the carrier sheet" and/or "only in the handle sheet". The examiner maintains as described above that the claimed "only" is not properly used as in Figs. 3 and 6 of the filed drawings show same exact cuts of shapes and size been formed to both carrier and handle sheets, which broadly considering the cuts made in the handle sheet capable of holding and carrying bottles. The examiner maintains that the previously added limitations to the claims; "only" is not described in the filed disclosure in a proper way.

Further applicants argue that the applied art of '465 does not teach a separate handle sheet and a separate carrier sheet as been claimed. However, the examiner likes to draw applicants attention to the main applied art '659, which discloses a use of two separate sheets one as a handle sheet and the other as a carrier sheet. The only thing missing of the main applied art '659 is the "overlying arrangement" of the carrier and handle sheets, which was described in the '465's reference. Therefore' it would have been obvious to one with ordinary skill in the art to use '465 teaching "overlying arrangement" of the sheets in '465's method, as it just a matter of design choice to re-arrange steps/means.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is 571-272-4470. The examiner can normally be reached on Tuesday - Friday from 9:00 AM to 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sameh H. Tawfik/  
Primary Examiner, Art Unit 3721